

FILED

JAN 19 2022

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY *[Signature]*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

VIA VADIS, LLC AND §
AC TECHNOLOGIES, S.A., §
PLAINTIFFS, §
§
V. § CAUSE NO. 1:14-CV-810-LY
§
§
BLIZZARD ENTERTAINMENT, INC., §
DEFENDANT. §

ORDER ON REPORT AND RECOMMENDATION

Before the court are (1) Blizzard's Motion for Summary Judgment of Non-Infringement and Invalidity filed August 10, 2021 (Doc. #175) and (2) Plaintiffs' Motion for Summary Judgment on Validity filed August 10, 2021 (Doc. #177), along with all responses and replies, which were referred to the United States Magistrate Judge for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. The magistrate judge filed a Report and Recommendation on December 26, 2021 (Doc. #246), recommending that this court deny Defendant Blizzard Entertainment, Inc.'s motion for summary judgment and grant in part Plaintiffs' motion for summary judgment by finding the "shifting" limitation is definite. In all other respects, the magistrate judge recommends that Plaintiffs' motion be denied.

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal Rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations of the magistrate judge within 14 days after being served with a copy of the Report and Recommendation, and thereby secure a *de novo* review by the district court. A party's failure to

timely file written objections to the proposed findings, conclusions, and recommendation in a Report and Recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*). Blizzard's Objections to the Magistrate's Report and Recommendation Regarding Motions for Summary Judgment were filed January 10, 2022 (Doc. #253). In light of the objections, the court has undertaken a *de novo* review of the entire case file and finds that the magistrate judge's Report and Recommendation should be approved and accepted by the court for substantially the reasons stated therein.

Defendant Blizzard Entertainment, Inc.'s objections reassert arguments raised before and properly addressed by the magistrate judge in the Report and Recommendation. With regard to the issue of whether the "shifting limitation" is definite, Blizzard argues that the current construction of "shifting" does not provide adequate notice to the public of what behavior is prohibited. The court disagrees. Therefore, Defendants objections are overruled.

IT IS THEREFORE ORDERED that Blizzard's Objections to the Magistrate's Report and Recommendation Regarding Motions for Summary Judgment were filed January 10, 2022 (Doc. #253) are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge (Doc. #246) is **ACCEPTED AND ADOPTED** by the court for the reasons stated herein.

IT IS FURTHER ORDERED that Blizzard's Motion for Summary Judgment of Non-Infringement and Invalidity filed August 10, 2021 (Doc. #175) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment on Validity filed August 10, 2021 (Doc. #177) is **GRANTED IN PART AS FOLLOWS**: the court concludes that the "shifting" limitation is definite. In all other respects, the motion is **DENIED**.

SIGNED this 19th day of January, 2022.


LEE YEAKEL
UNITED STATES DISTRICT JUDGE